



Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

Robert H. Corbin

October 9, 1980

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

James A. Shiner  
Special Deputy County Attorney  
STOMPOLY & EVEN, P.C.  
La Placita Village  
Magdalena Building, Suite 370  
120 West Broadway  
Tucson, Arizona 85701

Re: I80-174 (R80-221)

Dear Mr. Shiner:

Pursuant to A.R.S. § 15-122.B, we decline to review your letter dated September 24, 1980 to the Superintendent of Sunnyside Unified School District No. 12 concerning the district's sick leave policy.

Sincerely,

*Bob Corbin*

BOB CORBIN  
Attorney General

BC:MAP:eb

JOHN G. STOMPOLY  
JOHN R. EVEN  
JAMES L. STROUD  
JOHN PATRICK LYONS  
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OF COUNSEL  
CHARLES D. MC CARTY

AREA CODE 602  
792-2781

September 29, 1980

10-1-80 *pc*  
POLLARD  
R80-221

EDUCATION OPINION

ISSUE NO LATER THAN

11-28-80

Mr. Fred Bull  
Sunnyside School District  
Post Office Box 11280  
Tucson, Arizona 85734

Re: Accumulated Sick Leave

Dear Mr. Bull:

You requested an opinion concerning payment of accumulated sick leave to the estate of a certified employee who had continuously been employed by the District for a period of time exceeding three years. A total of 32 days had been accumulated by the employee prior to his termination of employment with the District as the result of his death.

Two written opinions by the school district's prior counsel have addressed this subject with respect to a classified employee. In an opinion letter dated September 24, 1979, counsel concluded:

"Based upon the above analysis, I believe that it is proper for the payment of the accumulated sick leave to be made in these circumstances."

The September 24, 1979, opinion was rescinded in a letter dated October 5, 1979, due to the following reasons: (1) no demand was made for the accumulated sick leave; and (2) there was reason to believe the primary purpose of the policy was directed at situations other than a termination of employment because of death. In the October 5, 1979, letter counsel recommended:

"Considering the above declared intent of sick leave policy, I hereby rescind my letter opinion to you of September 24, 1979. I do recommend

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September 29, 1980

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that you amend sick leave policy no. 6535 to provide that accumulated sick leave will not be paid in the event of death."

Policy No. 6535(5) as adopted May 22, 1979, (applicable to classified personnel) is identical to policy no. 6190(6), adopted May 22, 1979, (applicable to certified personnel.) Both provisions state as follows:

"Beginning July 1, 1977, an employee, either certified or classified, after having been continuously employed for a period of time exceeding three years, upon leaving the employ of the District will be paid for each day of accumulated sick leave at the following rates:

0-3 years - 0  
4-10 years - 25% of substitute pay x  
the number of accumulated sick leave days  
over 10 years - 50% of substitute pay x  
the number of accumulated sick leave days"

On May 22, 1980, the school board amended policy no. 6190 to read as follows:

"Beginning July 1, 1980, a certified employee, after having been continuously employed for a period of time exceeding three years, upon leaving the employ of the District will be paid up to a maximum of 180 days of accumulated sick leave at the following rates:

0-3 years - 0  
4-10 years - 30% of substitute pay x the  
number of accumulated sick leave days  
over 10 years - 55% of substitute pay x  
the number of accumulated sick leave days

A copy of policy no. 6190 as adopted May 22, 1979, and as amended May 22, 1980, and a copy of policy no. 6535 as adopted May 22, 1979, is attached hereto.

After having been advised by counsel that if the Board desired, it should amend its sick leave policy to

Mr. Fred Bull  
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September 29, 1980

provide that accumulated sick leave will not be paid in the event of death, the Board chose on May 22, 1980, to provide that accumulated sick leave shall be paid "upon leaving the employ of the District." Thus, the intent of the board appears to be that accumulated sick leave shall be paid to a certified employee whether that employee leaves the District voluntarily or as the result of death.

As noted by prior counsel in his opinion letter of September 24, 1979, the right to accumulate sick leave days would tend to encourage employees to use sick leave days only for bona fide illness. The policy rewards an employee with long years of service who had accumulated sick leave days up to 180 days.

A direct benefit of encouraging employees not to utilize sick leave days is a continuity in teaching obtained by having the regular teacher consistently present. Thus, rather than having a substitute teacher attempt to assume the duties of the regular teacher, with the usual disruption in continuity, the regular teacher is encouraged to use sick leave days only for a bona fide illness.

There is also a financial benefit to the District resulting from encouraging employees not to use sick leave days. The District will not be required to pay the full rate for a substitute. Rather, policy no. 6190 as adopted May 22, 1980, requires only a maximum payment to certified employees of "55% of substitute pay" for accumulated sick leave which is to be paid on termination of employment.

Former counsel has concluded in his September 24, 1979, opinion that the school board has the discretion to adopt a policy like that set forth in policy no. 6190. I concur with that conclusion for the reasons set forth in his opinion letter of September 24, 1979.

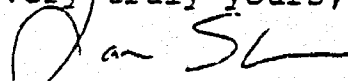
Based upon the foregoing, I believe that it is proper for payment of the accumulated sick leave to be made under the present circumstances to the estate of the deceased certified employee.

A copy of this opinion is being forwarded to the attorney general of the State of Arizona for his concurrence or revision pursuant to A.R.S. §15-436(b). I believe A.R.S.

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§15-436(b) shields the board from personal liability when relying upon the attorney general's written opinion or when the attorney general declines review pursuant to A.R.S. §15-122(b).

Very truly yours,

  
James A. Shiner

JAS:law  
Enclosure

cc: Attorney General Robert Corbin

Enclosures

1. September 24, 1979, letter from John Price
2. October 5, 1979, letter from John Price
3. Policy No. 6190 as adopted May 22, 1979 and amended May 22, 1980
4. Policy No. 6535 as adopted May 22, 1979

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LAW OFFICES OF  
PRICE AND PRICE  
FIRST NATIONAL BANK FINANCIAL CENTER  
4400 EAST BROADWAY, SUITE 800  
TUCSON, ARIZONA 85711

TELEPHONE 795-6630  
AREA CODE 602

JOHN PRICE  
DANIEL P. PRICE

September 24, 1979

Mr. Lewis T. Sorensen  
Superintendent  
Sunnyside Unified School District No. 12  
P. O. Box 11280  
Tucson, Arizona 85734

Dear Mr. Sorensen:

C  
C  
P  
Y  
You requested an opinion concerning payment of accumulated sick leave that could be paid to a classified employee that worked a continuous sixteen years with the School District and accumulated 130 days' sick leave and whose employment with the District was terminated because of the classified employee's death.

Your School District has adopted a sick leave policy for classified personnel, said policy being No. 6535, a copy of which is attached hereto and by this reference incorporated herein. In essence, the policy permits an accumulation up to a maximum of 130 days' sick leave and goes on to state:

"5. Beginning July 1, 1977, an employee, either certified or classified, after having been continuously employed for a period of time exceeding three years, upon leaving the employ of the district will be paid for each day of accumulated sick leave at the following rates:

...	
Over 10 years	50% of substitute pay times number of accumulated sick leave days."

The Attorney General of Arizona has addressed question of sick leave benefits in several opinions, and has emphasized the wide discretion accorded school boards in offering fringe benefits to its employees (see Attorney General Opinions No. 76-178 and No. 73-21. The legal issue involved is whether various fringe benefits violate Article IX, Section 7, of the Arizona Constitution by making a gift of public funds (see Attorney General Opinion I79-121 (R78-141). In reviewing the validity of fringe benefits, the Arizona Attorney General has stated:

Lewis T. Sorensen

September 24, 1979  
Page 2

"Sick leave plans and all other fringe benefits are adopted by school district governing boards after public discussion and after consultation with the school district's employees. So long as the sick leave plan and other fringe benefits have been adopted by the school district governing board prior to the time that the school district's employees have entered into their contracts for the ensuing year, all of those fringe benefits are granted in consideration of those employees promising to perform and performing services for the school district for that year. That consideration is valuable and adequate and negates the existence of a gift." (See Opinion of Attorney General No. 76-178, Page 3, and No. 179-121 (R78-141), Page 2.)

Although not stated in your sick leave policy, it would appear that the rationale behind the provision of the policy permitting an employee with over ten years' continuous employment to receive 50 per cent of substitute pay times number of accumulated sick leave days was to encourage employees to use sick leave days only for bona fide illness and to reward an employee with long years of service who had accumulated sick leave days up to 130 days. Such rationale seems to be well within broad discretionary power of School District Trustees in their enactment of Policy No. 6535.

The policy refers to payment on a basis of "50 per cent of substitute pay times number of accumulated sick leave days". The intent of the policy where certified personnel are involved is clear to the effect that certified personnel will not be paid on the basis of their regular pay but on the basis of something less, i.e., the pay that a substitute would receive per day. I believe this concept of lesser pay must be applied to classified personnel as well as to teachers, and unless the "substitute pay" has been established for classified personnel holding a like position to your deceased employee, I would suggest that the daily rate of such classified employee be reduced in the same proportion as a certified employee's daily rate would be reduced by using the substitute pay schedule.

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Lewis T. Sorensen

September 24, 1979  
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Based on the above analysis, I believe that it is proper for payment of the accumulated sick leave to be made in these circumstances.

A copy of this opinion is being forwarded to the Attorney General of Arizona for his concurrence or revision pursuant to A.R.S. §15-436.B. I believe A.R.S. §15-436.B shields the Board from personal liability when relying upon the Attorney General's written opinion and applies equally to Board action taken in reliance on an opinion which the Attorney General declines to review pursuant to A.R.S. §15-122.B.

Sincerely yours,

PRICE and PRICE

By /s/ JOHN PRICE

John Price, Attorney for  
Sunnyside Unified School  
District No. 12

JP/d1

cc: Bob Corbin  
Attorney General  
State of Arizona  
State Capitol  
Phoenix, Arizona 85007



R80- 221

JOHN PRICE  
DANIEL F. PRICE

LAW OFFICES OF  
PRICE AND PRICE  
FIRST NATIONAL BANK FINANCIAL CENTER  
4400 EAST BROADWAY, SUITE 800  
TUCSON, ARIZONA 85711

TELEPHONE 795-6630  
AREA CODE 602

October 5, 1979

Mr. Lewis T. Sorensen  
Superintendent  
Sunnyside Unified School District #12  
P. O. Box 11280  
Tucson, Arizona 85734

Dear Mr. Sorensen:

I wrote you on September 24, 1979, concerning payment of accumulated sick leave of 130 days that had accumulated to a classified employee whose employment with the District was terminated by death.

C  
C  
P  
Y  
You have advised me that there has been no demand made upon the District at this time for said sick leave and that the request for my opinion was directed on whether or not your sick leave policy, No. 6535, should be amended to preclude necessity of having to pay accumulated sick leave to employees whose employment terminates because of death. You further pointed out that the sick leave policy was primarily intended to cover situations of termination of employment due to retirement or the employee leaving the District for reasons other than death. You further pointed out that the District provided other fringe benefits for survivors of employees who die while in the employment of the District, such as accumulated retirement benefits and group life insurance benefits.

Considering the above declared intent of sick leave policy, I hereby rescind my letter opinion to you of September 24, 1979. I do recommend that you amend Sick Leave Policy No. 6535 to provide that accumulated sick leave will not be paid in the event of death.

I am forwarding a copy of this letter to the Attorney General of Arizona, and requesting that he not review my opinion of September 24, 1979, which is hereby withdrawn.

Sincerely yours,

PRICE and PRICE

By /s/ JOHN PRICE  
John Price, Attorney for  
Sunnyside Unified School  
District #12

ITEM 14

POLICY 6190

PARAGRAPH 5 AMENDED AS FOLLOWS:

Unused sick leave may be accumulated up to 250 days.

PARAGRAPH 7 AMENDED AS FOLLOWS:

Beginning July 1, 1980, a certified employee, after having been continuously employed for a period of time exceeding three years, upon leaving the employ of the district will be paid up to a maximum of 180 days of accumulated sick leave at the following rates:

0-3 years

-0-

4-10 years

30% of substitute pay times  
number of accumulated sick  
leave days

Over 10 years

55% of substitute pay times  
number of accumulated sick  
leave days

*Adopted 5-22-80*

2. Annual increments for extra-duty pay, if the assignment is indexed, shall be based on a percentage of one full step advancement on the teachers salary schedule. The board reserves the right to pay in excess of this schedule or to withhold the increment if the teacher's work justifies another procedure.

**Policy No. 6185 — Extra-Duty Pay — Athletics**

A flat rate of \$5 per hour has been established for all persons serving in an extra-curricular capacity. Each person employed for one of these positions will have supervisory responsibilities during the second half of the game and throughout the campus after the game.

**ABSENCES FOR ALL CERTIFIED PERSONNEL**

**Policy No. 6190 — Sick Leave (Adopted 5-22-79)**

1. In the event of illness, the teacher shall report to the district switchboard operator at the earliest possible time, no later than 7 a.m. This procedure is necessary to insure obtaining competent substitute teachers.
2. Sick leave shall be accrued at the rate of one day for every 18 contract days or major fraction thereof, not to exceed 14 days per year nor less than 11 days for a full-time teacher on a full year contract.
3. Proof of illness may be required in case of absence because of personal illness in excess of two consecutive days.
4. Unused sick leave may be accumulated up to a maximum of 180 days.
5. At the beginning of each year a statement of accumulated sick leave shall be sent to each employee by the business office.
6. Beginning July 1, 1977, an employee, either certified or classified, after having been continuously employed for a period of time exceeding three years, upon leaving the employ of the district will be paid for each day of accumulated sick leave at the following rates:

0 - 3 years	- 0 -
4 - 10 years	25% of substitute pay times number of accumulated sick leave days
Over 10 years	50% of substitute pay times number of accumulated sick leave days

**Policy No. 6195 — Illness in Immediate Family**

1. With the approval of the principal or immediate supervisor, an employee may be granted an absence of three days, maximum, without payroll deduction, per year for illness in the immediate family. Days in excess of three for family illness shall be deducted from the individual's accumulated personal sick leave. Immediate family is limited to wife, child, husband, father, mother, brother or sister of the employee or his/her spouse. Not cumulative from year to year.
2. A husband may be granted one day's illness in the immediate family for the day his wife gives birth to a child. This privilege does not extend to any other family relationship.

**Policy No. 6200 — Death in Immediate Family**

In case of death in the immediate family of the employee or his/her spouse (wife, child, husband, father, mother, brother or sister), and with the approval of the administration, an employee may be absent for a period not to exceed five school days without loss of salary.

In the event that it is necessary for an employee to travel in excess of 1,000 miles to attend funeral services, he/she may be granted an additional three days travel time. This extra time must be requested before leaving or through a long-distance telephone call. It will not be granted automatically. This leave time is not cumulative from year to year.

**Policy No. 6205 — Absence Due to Urgent, Private Business (Adopted 5-22-79)**

With the approval of the administration, an employee may be absent for urgent, private business for a period not to exceed two days without any reduction in salary. Written notice shall be given to the

- D. Forms for filing grievance, serving notices, making appeals, making reports and recommendations and other necessary or related procedures are to be prepared, reproduced and obtained from the Policies and Procedures Committee of the Classified Personnel Committee.
- E. Files: A file of all claims and decisions shall be maintained under the auspices of the Policies and Procedures Committee in cooperation with the administration. This file shall be located in the personnel office. Level One forms to be filed shall contain only the statement of the grievance, the action requested and the decision of the principal, appropriate administrator, or supervisor. These forms shall serve as a record of precedent. Forms for all other levels shall be filed in their entirety. No documents, communications, or records dealing with a grievance shall be filed in the personnel files of the participants.
- F. Access to Files: Reasonable access shall be made available to records and files of unprivileged information necessary to the determination and processing of any grievance.
- G. Time for Consultation and Grievance Meetings: All consultation and grievance meetings shall be held at a time that is mutually agreeable to both parties, but must not conflict with the education program. Hearings and appeals before the Board of Education shall be scheduled on regularly scheduled meeting dates. All hearings before the Board may be opened or closed as requested by the complainant.

### FRINGE BENEFITS

#### Policy No. 6530 - Vacation

1. Vacation time shall be accumulated at the rate of 5/6 of a day per month, or to a maximum of ten days for any 12-month period of time.
2. Following five years of employment as a salaried employee in the district, vacation time shall accumulate at the rate of 1 1/6 days per month, or to a maximum of 15 days for any 12-month period of time.
3. Only 12-month employees shall be entitled to accumulate vacation time.
4. The date the employee is placed on a 12-month status shall be used in determining the rate that vacation time shall be accumulated.
5. Vacation time shall not be accumulated for more than one year.
6. No vacation time shall be paid to employees who terminate service with less than six months of employment.
7. Following a minimum of six months, employees shall be eligible to use accumulated vacation at any time, with the approval of the immediate supervisor.
8. All approved requests for vacation must be in writing in advance of the desired leave date and submitted to the personnel office.
9. When a holiday occurs during an employee's regularly scheduled vacation period, the vacation shall be extended a number of days equal to the holiday(s).
10. Vacation accumulated as of June 30 of a fiscal year must be used by the employee before the following January 1.

#### Policy No. 6535 - Sick Leave

1. Sick leave for personal illness shall be accrued at the rate of one day per month or major fraction thereof, not to exceed 12 days per year.
2. Unused sick leave may be accumulated up to a maximum of 130 days.
3. After an employee's sick leave has been exhausted, accumulated vacation may be used. If the employee is still unable to resume his/her duties following use of accumulated vacation time, 30 working days on an off-payroll status will be allowed. At the end of this period, the employee must go on leave of absence, if eligible, or terminate.

4. At the beginning of each year a statement of accumulated sick leave shall be sent to each employee by the business office.
5. Beginning July 1, 1977, an employee, either certified or classified, after having been continuously employed for a period of time exceeding three years, upon leaving the employ of the district will be paid for each day of accumulated sick leave at the following rates:
 

0 - 3 years	-0-
4 - 10 years	25% of substitute pay times number of accumulated sick leave days
Over 10 years	50% of substitute pay times number of accumulated sick leave days

#### Policy No. 6540 - Illness in Immediate Family

1. With the approval of the principal or immediate supervisor, an employee may be granted an absence of three days, maximum, without payroll deduction, per year for illness in the immediate family. Days in excess of three for family illness shall be deducted from the individual's accumulated personal sick leave. Immediate family is limited to wife, child, husband, father, mother, brother or sister of the employee or his/her spouse. Not cumulative from year to year.
2. A husband may be granted one day's illness in the immediate family for the day his wife gives birth to a child. This privilege does not extend to any other family relationship.

#### Policy No. 6545 - Death in Immediate Family

In case of death in the immediate family of the employee or his/her spouse (wife, child, husband, father, mother, brother or sister), and with the approval of the administration, an employee may be absent for a period of not to exceed five school days without loss of salary.

In the event that it is necessary for an employee to travel in excess of 1,000 miles to attend funeral services, he/she may be granted an additional three days travel time. This extra time must be requested before leaving or through a long-distance telephone call. It will not be granted automatically. This leave time is not cumulative from year to year.

#### Policy No. 6550 - Absence Due to Urgent, Private Business

With the approval of the administration, an employee may be absent for urgent, private business for a period not to exceed two days without any reduction in salary. Written notice shall be given to the immediate supervisor at the earliest opportunity when such an absence is anticipated. Early vacation or other activities of a recreational nature will not be approved. Personal business leave shall not be cumulative from year to year. (See form next page.)